

the goal of achieving additional reductions.

*Response:* Since it is difficult to determine which emissions-reducing upgrades, replacements, and repairs are motivated by an averaging program and which would occur in its absence, it is reasonable for the state to allow all reductions that are not otherwise required to be used in emissions averaging. It is sufficient to show that the overall effect of the program is to create lower emissions than would occur in the program's absence, even if some of the specific reductions used in an averaging plan would have occurred in any case. The EIP guidance requirement that economic incentive programs produce a clear environmental benefit is met because of the role that the averaging program plays in making compliance with the NO<sub>x</sub> reduction rules possible, by the reduced emissions rate on sources that participate in averaging, and by the imposition of an emissions cap.

*Comment:* It is unclear that the imposition of an emissions cap results in "any appreciable environmental benefit that would not have otherwise been achieved by complying with the state's one-hour ozone attainment plan."

*Response:* The one-hour ozone attainment plan is a tool for managing air quality, through projecting the impacts of regulations and economic changes on emissions of ozone precursors and on concentrations of ozone in ambient air. The attainment plan, however, does not impose requirements on sources. While the attainment plan includes projections of future emissions, based on projected activity levels and allowable emissions rates, these future emissions and activity levels are not regulatory requirements on sources. This SIP revision will create a new emissions cap, consistent with the attainment demonstration, for sources that participate in emissions averaging. This emissions cap provides certainty, which would not otherwise exist, that emissions from participating sources will be capped despite the potential for activity level increases beyond those projected.

*Comment:* The emissions cap does not apply until 2008, by which time it is likely that other factors will reduce NO<sub>x</sub> emissions in the Milwaukee-Racine area.

*Response:* It may be true that other programs or events will reduce future emissions beyond what is required under Wisconsin's current NO<sub>x</sub> rules. However, for the purpose of this rulemaking, EPA cannot assume the implementation of these future

programs prior to 2008, and therefore counts the 2008 emissions cap as an environmental benefit.

*Comment:* The program "fails to account for the relationship between NO<sub>x</sub> averaging plans and Title V permits." A unit operating under a Title V permit might use emissions averaging to increase its emissions, violating the facility's Title V permit and constituting a major modification necessitating new source review.

*Response:* Any unit that increases emissions sufficiently to violate its permit would be subject to enforcement, and any unit that increases emissions sufficiently to constitute a major modification would be subject to new source review, notwithstanding averaging for the purpose of compliance with the NO<sub>x</sub> emissions limits contained in NR 428.04(2) and NR 428.05(3). The averaging program cannot be used for compliance with any other requirement, and it cannot be used to avoid any requirement. Proper use of the averaging program for compliance with the NR 428 NO<sub>x</sub> emissions limits will be consistent with the Title V permit, because when these limits are included in the permits of sources eligible for averaging, the permits will specify that averaging is a compliance option.

*Comment:* "The proposed SIP revision does not explicitly require units participating in averaging plans to modify their Title V permit accordingly." Unless the public can determine from a facility's Title V permit whether a unit is part of an averaging plan, which other units are included in the plan, and how to determine the applicable emissions limits among and between those units, public participation in the Title V permit process will be undermined." Moreover, "the public is charged with obtaining a copy of an averaging plan from the participating parties," potentially inhibiting the public's ability to assess a source's compliance status.

*Response:* While NR 428 does not itself contain a requirement that units participating in averaging plans modify their Title V permits, NR 407, which is part of Wisconsin's SIP, does require that new requirements and compliance options be incorporated into permits as they are issued. Therefore, permits issued for sources that may use averaging must authorize the use of the averaging program as a compliance option. The Clean Air Act does not require that the details of averaging plans be included in Title V permits, but rather that the Title V permit identify whether a unit may use emissions averaging as a compliance

option. EPA agrees with the commenter that the public should have access to the averaging plan when viewing a company's Title V permit, and the public should not have to obtain the averaging plan from the source. The WDNR has clarified, in a letter dated May 28, 2003, that it will keep any prospective averaging plan, DNR comments on the plan, the final plan, and all compliance reports, in the Title V permit file for each participating source. It should also be noted that participants in an emissions averaging plan must provide public notice of the plan in a local newspaper at least 60 days prior to the start of the ozone season.

*Comment:* The proposed SIP revision fails to include provisions preventing a unit receiving excess emissions credits from increasing emissions sufficient to constitute a major modification without undergoing PSD or NSR review.

*Response:* The PSD and NSR programs require sources to undergo review when increasing emissions sufficient to constitute a major modification. Nothing in Wisconsin's averaging program changes this requirement.

*Comment:* EPA's "justifications for failing to apply agency guidance [on averaging among sources not under common ownership] are insufficient because they fail to address the purported purpose behind the unified owner requirement." The unified owner requirement "is meant to ensure enforcement and compliance." A cap, whatever its environmental benefits, cannot substitute for lack of enforceability.

*Response:* A cap provides assurances that if enforcement of average emission rates proves difficult, the state and EPA can nonetheless protect the environment by enforcing against any violation of the cap.

*Comment:* Saying that WDNR staff will be able to review averaging plants is irrelevant because the guidance prohibits emissions averaging between facilities owned by different companies to ensure enforcement and compliance. Given the difficulty of predicting activity levels, "merely making sure that projected activity levels are reasonable does not ensure that day to day averaging is achieved."

*Response:* The commenter is correct that projecting reasonable activity levels does not ensure that day to day averaging is achieved. In looking at the question of whether Wisconsin will be able to check the reasonableness of projected activity levels, EPA is seeking to ensure that averaging plan participants will not be able to